IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1931 of 1983
With
FIRST APPEAL No. 681 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? 1 to 5 NO

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BINDUMAL SUGNUMAL JAGWANI - Appellant(s)
Versus
MAGANBHAI J PATEL & 1 - Defendant(s)

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Appearance :
MR MANGESH R MENGDEY for Appellant(s) : 1,
MR DR BHATT for Defendant(s) : 1,
MR NAGIN N GANDHI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 28/12/2007

ORAL JUDGMENT

1. Both the appeals under the erstwhile provisions of section 110-D of the Motor Vehicles

Act, 1939 ("the Act" for short) have arisen from the common judgment and award dated 17.8.1983 in MACP Nos.314 of 1981 and 556 of 1982. First Appeal No.1931 of 1983 is filed by the original claimant for enhancement of compensation and another appeal is preferred against rejection of the claim on the ground of the claimant's own negligence resulting into the accident.

2. On 27.1.1981, while Bindumal Sugnumal Jagwani, owner and driver of goods autorikshaw was proceeding towards Olpad, Maganbhai Jivanbhai Patel, the other claimant, is stated to have dashed alongwith his motorcycle with the autorikshaw from the opposite direction. After Bindumal Sugnumal Jagwani filed his claim application, Maganbhai Jivanbhai Patel also appears to have filed his claim petition claiming Rs.48,000/-.

3. It was seen from record and discussion of evidence in the impugned award that the autorikshaw suffered extensive damage by the impact while it was found to be, according to the panchnama, on the correct side of the road, leading to the inescapable conclusion that the motorcyclist had dashed with the autorikshaw coming in front of it. Applying the principle of *res ipsa loquitur,* it could be inferred that the

driver of the motorcycle could neither control the speed nor the direction of the motorcycle and since the motorcycle was a heavier one, its velocity only could cause extensive damage to the autorikshaw which was evident from the photographs produced on record. Therefore, no exception could be taken to the finding of fact to the effect that negligence was attributable to the motorcyclist and the driver and owner of the autorikshaw was entitled to compensation.

4. While calculating compensation, it was noticed that, after serious injuries and prolonged treatment, there was permanent partial disability to the tune of 50 to 65% on account of deformity of left femur by shortening of left limb by 4 cms., 60% reduction in left knee and 50% reduction in weight bearing capacity on the left lower limb, deformity of left wrist and 40% reduction in the movement of left wrist. Therefore, permanent partial disability for the whole body was taken to be 32.5%. However, taking the age of the claimant to be 50 years, against his claim of 42 years, and considering his monthly income to be Rs.600/-, the Tribunal assessed the loss at Rs.100/- per month and awarded Rs.9,600/- for the loss of income. Neither future prospect of increase in income was considered nor was permanent disability of 32.5%

fully taken into account in assessment of loss of income. Therefore, the award of compensation on the ground of loss of income is evidently required to be revised.

5. Even assuming the age of the claimant at the time of accident to be between 45 and 50 years, multiplier of 13 has to be applied according to the Second Schedule and taking the loss of income as 33%, yearly loss of Rs.2,400/- has to be multiplied by 13 which would result into total sum of Rs.31,200/-. Accordingly, even disregarding the claims of small additions to the amount of compensation under other heads, additional compensation to the tune of Rs.21,500/- has to be awarded to the claimant Bindumal Sugnumal Jagwani.

6. The other appeal of the motorcyclist has no merits and no ground is made out to award any compensation to him, either on the ground of contributory negligence of the rikshaw-driver or any other ground, even as it was vehemently argued by learned counsel Mr.Amit Patel that the autorikshaw was likely to have gone on wrong side of the road and caused the accident.

7. Accordingly, First Appeal No.1931 of 2003 is partly allowed with the direction that the

appellant shall be entitled to additional sum of Rs.21,500/- by way of compensation which shall be paid by the respondents with interest @ 7.5% p.a. from the date of application, i.e. 21.7.1981, till the amount is deposited with the Tribunal with proportionate cost. First Appeal No.681 of 1984 is dismissed with no order as to costs.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)